

3 The Complaint was accepted by stipulation of counsel on November 12, 2004. Accordingly, this Notice of Removal is filed within the 30-day period required by 28 U.S.C. § 1446(b).

4 Plaintiff's Complaint alleges a violation of the Truth In Lending Act (15 U.S.C. Sec. 1601, et seq.) and Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639).

5 Pursuant to 28 U.S.C. § 1331, the district courts of the United States have original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States and, as such, have original jurisdiction over this action.

6 Because this is a civil action over which the district courts of the United States have original jurisdiction, Defendants are entitled to remove this action to the United States District Court for the Northern District of Georgia, pursuant to 28 U.S.C. §§ 1331 and 1441(b).

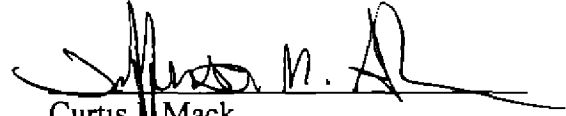
7 The original of Exhibit 2 attached hereto (Notice of Removal to Federal Court) is being dispatched by Defendant for filing in the State Court simultaneously with the dispatch of this pleading to this Court. A copy of this notice (less attachments) is attached to the Notice of Removal to Federal Court being filed in the State Court.

8 The exhibits hereto include all pleadings received by or served upon Defendant in connection with Plaintiff's claims.

9 Venue lies in this Court pursuant to 28 U.S.C. § 1441(a) because Plaintiff's action is pending within this Court's geographic jurisdiction.

For the reasons cited above, Defendant removes this action to this Court from the
State Court of Fulton County, Georgia

This 13th day of December, 2004



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d/b/a Ditech.com

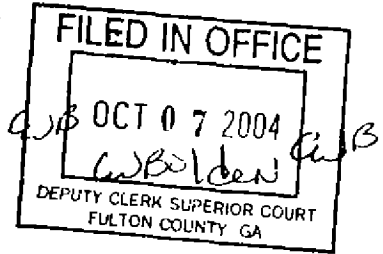
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Motions Pro Hac Vice Pending

S
IN THE SUPERIOR COURT FOR FULTON COUNTY
STATE OF GEORGIA



Jean L Rast,

Plaintiff,

v

GMAC Mortgage Corporation
dba Ditech com,

Defendant

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CIVIL ACTION

File No

2004cv92184

COMPLAINT

Jean L Rast (referred to as "Rast") for her complaint against the defendant,
GMAC Mortgage Corporation dba ditech com ("defendant" or "Ditech") alleges and
states

- 1 The defendant named here is a foreign corporation doing business in
this State and maintains an office in this County
- 2 The defendant, ditech is a large, sophisticated lender that solicits clients
for second mortgage loans through a massive television campaign and
through the use of an internet web site Ditech advertises that it allows
the public to deal directly with the lender and avoid the middleman,
implying that it will cost the borrower less than a traditional loan
through a bank The web site also claims "Competitive Rates Our
convenient and speedy process enables us to offer some of the lowest
rates in the business for all types of home loans We challenge you to
find lower rates and fees from any other lender out there!" See



www.ditech.com/about/why_ditech.jsp As set forth more fully below, ditech regularly and systematically charges exorbitant fees in connection with its second mortgage loans

- 3 Unlike traditional loans that are closed by a closing attorney, Ditech's practice is to have the documents delivered by overnight mail or a notary or "document signer" deliver the documents to the customer at the customer's home. As stated on its web site "In some states, for a refinance or second mortgage, ditech.com will send a document signer to your home or another place that you designate so you can sign all your loan documents." See

www.ditech.com/questions/loanapplication.jsp#5 The Notary does not have the ability or knowledge to answer any questions regarding the loan. The signer is merely instructed where to obtain signatures, nothing more. These practices constitute the unauthorized practice of law in the State of Georgia. See IN re UPL Advisory Opinion 2003-2, 2003 Ga Lexis 946 (November 10, 2003). This deceptive scheme violates the consumer protection laws enacted by Congress and the entire spirit of the "Truth in Lending" laws designed to provide consumers with easily understood and disclosed information regarding the true cost of credit.

- 4 This is an action pursuant to the Truth in Lending Act ("TILA"), codified at 15 U.S.C. Sec 1601 et seq. TILA was enacted by Congress in 1968 as Title I of the Consumer Protection Act. TILA is a remedial

statute that is to be construed liberally *Ellis v GMAC*, 160 F 3d 703, 707 (11th Cir 1998)

5 The Federal Reserve Board adopted Regulation Z shortly after enactment of the 1968 Act. Regulation Z can be found at 12 CFR 226.1 et seq. The purpose of TILA and Regulation Z is to promote the informed use of credit and level the playing field between competing creditors.

6 The law is designed to protect consumers in credit transactions by requiring the clear disclosure of the key terms and costs of the lending transaction. The goal of TILA is to enable the consumer to understand what their actual costs of borrowing will be on a given transaction.

7 TILA intends to provide consumers with an informed understanding of the cost of credit by forcing lenders to make certain disclosures.

8 Additionally, TILA provides for material disclosures under 15 U.S.C. Sec. 1601 (u), which includes “the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number of and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by [15 U.S.C. Sec. 1639 (a)]”

9 Additionally, when a consumer is using their home as collateral for a loan, the TILA provides the consumer with the right to cancel non-

purchase money loans that include liens on their homes. See 15 U.S.C. Sec. 1635 (a).

10 The right to cancel may be exercised until midnight of the third business day after the loan is consummated. This right may be extended up to three years if the consumer borrower is not provided accurate material disclosures. See 15 U.S.C. Sec. 1635 (f).

11 In 1994, Congress added to the TILA by enacting the Home Ownership Equity Protection Act, 15 U.S.C. § 1639, ("HOEPA"). HOEPA was enacted by Congress to curb predatory lending.

12 Congress found that several high-rate lenders were using non-purchase money mortgages to take advantage of unsophisticated and low income homeowners in a "predatory" fashion. See S. Rep. 103-169, 1994 U.S.C.C.A.N. 1881, 1907.

13 HOEPA provides additional protections for consumers whose loan falls within the definition of a "High Cost Mortgage." A loan is considered a "high cost mortgage" and triggers the HOEPA requirements if one of two tests is met. The first test is whether the consumer was charged more than 8% of the "total loan amount" in points and fees. In setting the 8% bright line test Congress found that the 8% level for points and fees was well above the industry average. The 8% trigger was to "prevent unscrupulous creditors from using grossly inflated fees and charges to take advantage of unwitting consumers." S. Rep. 103-169,

1994 U S S C A N 1881, 1908 The second test is whether the APR exceeds the comparable treasuries rate by more than 10%

14 At least three business days prior to closing a “high cost” loan, Lenders are required by 15 U S C Sec 1639 to provide the following written disclosures in conspicuous type size

- (a) the annual percentage rate,
- (b) the amount of the monthly payment,
- (c) that the Consumers were not required to complete the transaction merely because they received the disclosures or that they signed a loan application,
- (d) that the loan would result in a mortgage against their home, and
- (e) that they could lose their home, any money they have put into it, if they did not meet their obligation

The form used by ditech for the disclosures required by HOEPA fails to set out the disclosures in conspicuous type size The form used by ditech for the disclosures required by HOEPA also erroneously and deceptively includes 2 references to the loan interest rate

PARTIES

15 Plaintiff is a “consumer” as defined under TILA, 15 USC § 1602(h)

16 The plaintiff is a resident of Georgia

17 Defendant. ditech. is a mortgage company and a “creditor” as defined under TILA, 15 USC § 1602(f)

18 Ditech has made more than five loans secured by real property in the
each of the years 1999, 2000, and 2001

COUNT I

VIOLATION OF TRUTH IN LENDING

19 Rast incorporates by reference, the allegations in the foregoing
paragraphs

20 Rast entered into a loan that was secured by her principal dwelling

21 Rast paid at least was charged up front fees of at least \$6,005 for a
\$33,400 loan with an alleged APR of 20.881%. Rast avers the actual
APR is 21.5271%, a difference of .6461%

22 On the day she signed the loan documents she was not provided copies
of any documents. She was subsequently provided documents. The
Truth in Lending Disclosure Statement provided to the Rast is attached
as Exhibit 1.

23 She was entitled to receive 2 notices of her right to cancel the
transaction. On the day she signed, she received none.

24 The notices were required to set forth the date the right to cancel period
expires pursuant to 12 CFR Sec. 226.23(b)(1)(v).

25 The notice of right to cancel that was provided later did not include the
date their right to cancel expired. Rast was not given the proper notice
of the right to cancel in violation of the TILA.

26 The schedule of payments provided was inaccurate. The first payment
was not due on January 1, 2001 as set forth on the Truth in Lending

Disclosure Statement The first payment was paid from the loan proceeds See Closing Instructions, Exhibit 2

27 The date of the note was November 5, 2000

28 Plaintiff gave the defendant written notice of an election to cancel the transaction within three years of the date set forth on the note

29 Plaintiff's written election to cancel was given on September 23, 2003

30 A response is required within 20 days See 15 U S C Sec 1635 (a)

31 The defendant did not honor or respond to Rast's written election to cancel at any time

32 Rast was forced to file this action to confirm the election to cancel

Wherefore, the Rast prays this court grant the following relief in her favor and against defendant, ditech

a A judgment confirming the election to cancel the transaction and granting Rast the relief she is entitled to under 15 U S C § 1635,

b An award of statutory damages under 15 U S C Sec 1640 for ditech's failure to timely respond to the notice of election to cancel,

c An award of costs and attorneys fees,

d Such other and further relief that the court deems just and proper

COUNT II

VIOLATION OF THE HOME OWNERSHIP AND EQUITY PROTECTION ACT

33 Rast incorporates by reference the foregoing allegations

- 34 Rast was charged an APR that exceeded the applicable treasuries rate
by more than 10% and points and fees in excess of 8% of the "total loan
amount"
- 35 Rast's loan falls within the definition of a "high cost" mortgage as that
term is defined by 15 U S C § 1602 (aa)
- 36 Rast's loan falls within the parameters of HOEPA, 15 U S C § 1639
- 37 HOEPA requires that certain disclosures be made in conspicuous type
size to consumers at least three business days before loan
consummation See 15 U S C Sec 1639 (b)(1)
- 38 Rast was not provided the notices required three business days in
advance as required by 15 U S C Sec 1639 (b)
- 39 The disclosures required by 15 U S C Sec 1639 (a) are deemed
material disclosures under 15 U S C Sec 1602 (u)
- 40 The defendant included a prepayment penalty that failed to comply with
15 U S C Sec 1639 (c)(2)(B)
- 41 The inclusion of terms, prohibited by HOEPA, are deemed to be failure
to provide material disclosures for purposes of rescission 15 U S C
Sec 1639 (j)
- 42 Rast gave the defendant written notice of the election to cancel the
transaction within three years of the date set forth on the note
- 43 The defendant did not honor or respond to the written election to cancel
at any time
- 44 Rast was forced to file this action to confirm the election to cancel

Wherefore, the Rast prays this court grant the following relief in her favor and against defendant, ditech

- a A judgment confirming the election to cancel the transaction and granting Rast the relief she is entitled to under 15 U S C § 1635,
- b An award of statutory damages under 15 U S C Sec 1640 for ditech's failure to timely respond to the notice of election to cancel,
- c An award of costs and attorneys fees,
- d Such other and further relief that the court deems just and proper

Respectfully submitted,

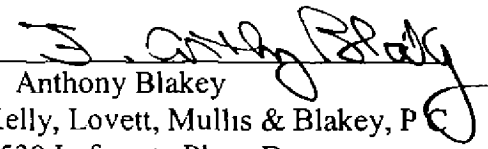

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Albany, GA 31708
(229) 888-9128
GA BAR No 061817

EXHIBIT 1

Lender GMAC Mortgage Corporation DBA ditech com
3200 Park Center Dr Suite 150
Costa Mesa CA 92626

Type of Loan	Conventional
Date	November 5, 2000
Disclosure Type	Final

REPAYMENT See Payment Schedule below

DEMAND FEATURE ☒ This loan does not have a Demand Feature ☐ This loan has a Demand Feature as follows:

REQUIRED DEPOSIT ☐ The annual percentage rate does not take into account your required deposit

VARIABLE RATE FEATURE ☐ This Loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.

ASSUMPTION Someone buying this property ☒ cannot assume the remainder of the mortgage on the original terms
☐ may assume subject to conditions the remainder of the mortgage on the original terms

FILING / RECORDING FEES \$ 100.20

NON-FILING INSURANCE \$ N/A

PROPERTY INSURANCE. ☒ Homeowner's insurance or fire and extended coverage is a required condition of this loan. Also, if the property securing this loan is located in a flood hazard area, you will be required to obtain flood insurance. Borrower may purchase this insurance from any insurance company acceptable to lender.

LATE CHARGES If a payment is more than 15 days late you will be charged a late charge of 6.000% of the payment.

PREPAYMENT If you pay off your loan early, you

<input checked="" type="checkbox"/> may	<input type="checkbox"/> will not	have to pay a prepayment penalty
<input type="checkbox"/> may	<input checked="" type="checkbox"/> will not	have to pay a minimum finance charge
<input type="checkbox"/> may	<input checked="" type="checkbox"/> will not	be entitled to a refund of part of the finance charge

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I/We hereby acknowledge reading and receiving a complete copy of this disclosure

Borrower/Date

Borrower/Date

Borrower/Date

Borrower/Date

EXHIBIT 2

BORROWERS COPY**CLOSING INSTRUCTIONS**

CLOSING AGENT	Ditech COM	LOAN NUMBER	000652332570
ADDRESS	3200 Park Center Drive	TODAY'S DATE	November 2 2000
	#150	CLOSING DATE	November 5 2000
	Costa Mesa CA 92626	FUNDING DATE	November 15 2000
CONTACT	Rochelle Morales	FIRST PAYMENT DATE	January 1 2001
PHONE NUMBER	(714) 800 6378	LAST PAYMENT DATE	December 1, 2015
FAX NUMBER	(714) 800 7378	NET FUNDING/CHECK AMOUNT	\$33 400 00
BORROWER NAME(S) Jean L Rast		PURPOSE	Second
VESTING	Jean L Rast	PROPERTY TYPE	One Family
		LOAN PROGRAM	Reward Loan (110% Second
		SALES PRICE	\$148,000 00
		LOAN AMOUNT	\$33 400 00
MAILING ADDRESS	155 Roswell Farms Court Roswell GA 30075	INTEREST RATE / POINTS	15 990
		TERM	180 months
PROPERTY ADDRESS	155 Roswell Farms Court Roswell GA 30075	MARGIN	N/A
		INDEX	N/A
SELLERS NAMES		FULLY INDEXED RATE	N/A
		FIRST ADJUSTMENT CAP	N/A
		LIFE ADJUSTMENT CAP	N/A
ESCROW NUMBER	181911	FIRST PMT CHANGE DATE	N/A
ESCROW OFFICER		INDEX DESCRIPTION	N/A
TITLE COMPANY			
TITLE ORDER NO		PRINCIPAL AND INTEREST	490 32
Please Fax FINAL HUD 1 to			
FUNDER NAME	Pamela Adams	TOTAL MONTHLY PAYMENT	\$490 32
PHONE NUMBER			
FAX NUMBER	(714) 800 7202		

HUD FEES DESCRIPTION	TOTAL CHARGED	BORROWER PAID	SELLER PAID	LENDER PAID	THIRD PARTY PAID	FEE P O C
Loan Origination Fee	5,010 00	5,010 00				
Administration Fee	995 00	995 00				
Interim Interest 16 days @ \$14 84 per day	237 44	237 44				
First Payment	490 32	490 32				
Mortgage Tax	100 20	100 20				

ESCROWS DESCRIPTION	TOTAL CHARGED	BORROWER PAID	SELLER PAID	LENDER PAID	THIRD PARTY PAID	FEE P O C
Hazard Insurance Escrow (monthly escrows waived)		0 00				

ENCLOSED ARE THE FOLLOWING DOCUMENTS PERTAINING TO THE MORTGAGE CLOSING YOU ARE HANDLING ON OUR BEHALF

Processor Document Summary Check Sheet	Borrower's Certification & Authorization (DITech)
Processor Cover Sheet	Uniform Underwriting and Transmittal Summary
Closing Instructions - Notice to Closing Agent & Borrower(s)	Signature/Name Affidavit
Request For Copy or Transcript of Tax Form	W 9 Request for Taxpayer Id Num and Certification
Closing Instructions	1003 (Residential Loan Application)
Reward Electronic Payment Plan	Addendum To HUD 1
Second Mortgage Fixed Rate Note (Georgia) (VMP)	Reward Note Addendum
Multi State 5 Year Prepayment Addendum To Note	Second Mortgage - Deed of Trust (Georgia) (VMP)
Occupancy Affidavit and Financial Status	Monthly Payment Letter
Truth In Lending Disclosure Statement	Itemization Of Amount Financed
Notice Of Right To Cancel (General)	Error and Omissions / Compliance Agreement
Correction Agreement Limited Power of Attorney	Closing Accommodation Rider
Acknowledgment of Deed of Trust / Mortgage	Owner's Affidavit (to be used for ATM only)
Certification of Trust	

CONDITIONS TO BE SATISFIED AT CLOSING

Cash Out in excess of existing first lien seasoned second lien all closing costs and 1% of the new loan amount permitted

CONDITIONS TO BE SATISFIED AT CLOSING

Cash Out in excess of existing first lien seasoned second lien all closing costs and 1% of the new loan amount permitted

SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JEAN L RAST

Plaintiff

VS

GMAC MORTGAGE CORPORATION

d/b/a Ditech com.


Defendant

CIVIL ACTION FILE
NUMBER 2004CV92184

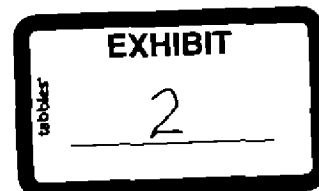
NOTICE OF REMOVAL TO FEDERAL COURT

Defendant GMAC Mortgage Corporation d/b/a Ditech com ("Defendant"). by counsel, give notice that they have this day filed a Notice of Removal of this action, pursuant to 28 U S C §§ 1441 and 1446, in the United States District Court for the Northern District of Georgia, Atlanta Division Pursuant to 28 U S C § 1446(d). "the State court shall proceed no further unless and until the case is remanded " A copy of the Notice of Removal, less attachments, is attached and filed herewith as Exhibit A

This 13th day of December, 2004


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Jefferson M. Allen
Georgia Bar No 010898
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d/b/a Ditech.com

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**SIGNATURES CONTINUED ON FOLLOWING PAGE**

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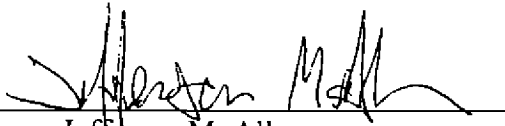
Motions Pro Hac Vice Pending

CERTIFICATE OF SERVICE

I HEREBY certify that I have served a copy of the NOTICE OF REMOVAL TO
FEDERAL COURT upon all counsel by first class mail, postage prepaid, addressed to

F Anthony Blakey
Kelly, Lovett, Mullis & Blakey, P C
2539 Lafayette Plaza Drive
P O Box 70879
Albany, GA 31708

This 13th day of December, 2004


Jefferson M. Allen
Georgia Bar No 010898

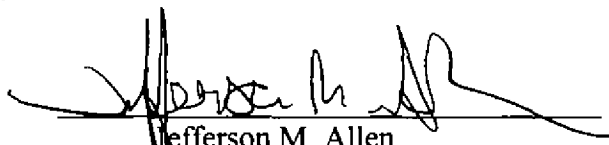
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